

1 Only Appellant's cleaning activities remain at issue. Appellant argues that the cleaning of stock
2 ponds, tanks and sump pumps is not taxable under the contracting classification. Appellant bears the
3 burden of proof as to all issues of fact. A.A.C. R16-3-118.

4 Arizona imposes transaction privilege tax on the business of prime contracting. A.R.S. § 42-
5 5075(G)(1). A contractor, or builder, is one who undertakes to "construct, alter, repair, add to, subtract
6 from, improve, move, wreck or demolish any building, highway, road, railroad, excavation, manufactured
7 building or other structure, project, development or improvement, or to do any part of such a project . . ."
8 A.R.S. § 42-5075(G)(2). A "prime contractor" is the contractor "who is responsible for the completion of
9 the contract." A.R.S. § 42-5075(G)(6). Rule R15-5-612 of the Arizona Administrative Code ("A.C.C.")
10 states that "(s)hovel and backhoe operations, when provided with an operator, are taxable as contracting
11 activities."

12 Farm sumps and stock ponds are holes in the ground that are made of dirt. Stock ponds and
13 tanks are typically constructed to slow water runoff on cattle ranches. They trap sediment and debris,
14 creating cleaner water for livestock. Farm sumps are usually located at the end of a farm field for
15 recycling irrigation water. Farm sumps fill up with sediment approximately once a year. The debris and
16 sediment in the ponds, tanks and sumps consist of manure, leaves, sticks and heavy clay.

17 Appellant uses a rubber tire articulating front end loader to remove the debris from the ponds and
18 sumps. The front end loader is similar to a backhoe but without the "digger" on the back. Appellant
19 argues that a backhoe is designed to dig into the ground, or excavate, which is a listed contracting
20 activity. A front end loader, according to Appellant, is designed to load and remove debris from the
21 surface of the ground. Appellant collects the debris and sediment in a bucket on the front end loader and
22 transfers it to a nearby pile.

23 A.A.C. R15-5-612 does not specifically list front end loaders. More importantly, the Board finds
24 that Appellant's cleaning activities do not rise to the level of contracting.

25 The Department argues that Appellant's activities are similar to those found to be taxable in
Granite Constr. Co. v. Dep't of Rev., 168 Ariz. 93, 811 P.2d 345 (App. 1990). However, the activities in
Granite consisted of "reclamation activities included recontouring, surface grading, respreading of stored
topsoil, and seeding, revegetating and fencing reclaimed land." *Id.* at 99, 811 P.2d 351. The activities

1 performed in *Granite* to restore land that had been strip mined clearly exceed the scope of Appellant's
2 cleaning activities.

3 The Board concludes that, essentially, removing leaves and dirt from a still usable and functioning
4 pond or sump (similar to cleaning a pool) does not "alter," "repair," "add to," "subtract from," or "improve"
5 an excavation or other structure, project, development or improvement. Therefore, Appellant's cleaning
6 activities for tax years 1996, 1997 and 1998 are not taxable.¹

7 CONCLUSIONS OF LAW

8 1. Appellant has not shown that its failure to file returns and pay the tax on its taxable activities
9 was due to reasonable cause; therefore, the penalties imposed may not be abated. A.R.S. § 42-1125(A)
10 and (D).

11 2. Appellant's cleaning activities are not taxable under the prime contracting classification.
12 A.R.S. § 42-5075; *Granite Constr. Co. v. Dep't of Rev.*, 168 Ariz. 93, 811 P.2d 345 (App. 1990).

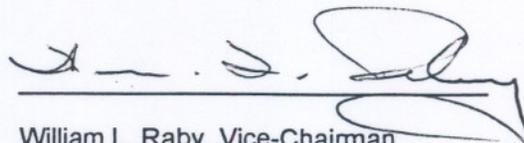
13 ORDER

14 THEREFORE, IT IS HEREBY ORDERED that the appeal is denied in part and upheld in part,
15 and the final order of the Department is modified.

16 This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer,
17 unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254.

18 DATED this 26th day of June, 2001.

19 STATE BOARD OF TAX APPEALS

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21 _____
22 William L. Raby, Vice-Chairman

23 WLR:ALW

24 CERTIFIED

25 _____
¹ Appellant has been unable to produce invoices for 1995; therefore, it has failed to prove that any income from this year is attributable to nontaxable activities.

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